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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/754,812

01/09/2004

Peter S. Schulte

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HANLEY, FLIGHT & ZIMMERMAN, LLC
150 S. WACKER DRIVE
SUITE 2100
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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

09/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/754,812	Applicant(s) SCHULTE ET AL.	
	Examiner Gregory J. Strimbu	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-56 is/are pending in the application.
- 4a) Of the above claim(s) 35,43,47 and 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-34,36-42,44-46,48-54 and 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/9/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Applicant's election with traverse of species I in the reply filed on April 17, 2006 is acknowledged. The traversal is on the ground(s) that the examiner has failed to provide any reasoning as to why each of the alleged species is independent or distinct, the examiner has failed to allege that it would be a serious burden on the examiner to consider all of the different species, and maintaining the restriction requirement is a serious burden on the applicant. This is not found persuasive because the examiner has provided reasoning as to why each of the species is independent and distinct. See page 2 of the Office action mailed March 17, 2006. Because the applicant has failed to address the examiner's reasoning why each of the species is patentably distinct, the applicant's comments in the reply of April 17, 2006 are not persuasive. Additionally, withdrawal of the restriction requirement would create a serious burden on the examiner because additional classes/subclasses would need to be searched in order to properly examine all of the patentably distinct inventions. Finally, maintaining the restriction requirement does not necessarily create an additional burden on the applicant. If a generic claim is found to be allowable, all of the applicant's patentably distinct inventions would be included in one patent. The requirement is still deemed proper and is therefore made FINAL.

Claims 35, 43, 47 and 55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 17, 2006.

Claim Rejections - 35 USC § 112

Claims 31-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “movable horizontally across the doorway” on lines 6-7 of claim 31 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a door or the combination of a door and a surrounding structure. The preamble of claim 31 implies the subcombination while the positive recitation of the doorway on lines 6-7 of claim 31 implies the combination. Recitations such as “the lower track is entirely outside the width of the doorway” on line 10 of claim 31 render the claims indefinite because it is unclear how the lower track can be attached to the door panel and be entirely outside the width of the doorway when the door panel is closed. Recitations such as “movement of the door panel . . . path” on lines 2-3 of claim 36 render the claims indefinite because it is unclear if the applicant is referring to the movement of the door panel set forth above or is attempting to set forth another movement in addition to the one set forth above. Recitations such as “its” on line 2 of claim 42 render the claims indefinite because it is unclear what element of the invention “its” is referring to.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 31-33, 36, 37 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Delgado et al. Delgado discloses a door 10 for at least partially covering a doorway and movable relative thereto, the doorway being defined by a surrounding structure that includes a wall floor such that the doorway has a width, the door comprising: an upper track (not shown, but see paragraph 37, line 5); a door panel 14 suspended from the upper track and being movable horizontally across the doorway along a predetermined normal path; a lower track 22 disposed below the upper track wherein the lower track is attachable to one of the door panel and the surrounding structure such that the lower track is entirely outside the width of the doorway;

a panel retention system 24 adapted to be carried by one of the door panel and the surrounding structure, wherein the panel retention system is movably connected to the lower track such that the panel retention system and the lower track provide relative traveling motion therebetween to help guide the door panel along the predetermined normal path; and

a resilient connection 28 provided by at least one of the lower track and the panel retention system, wherein the resilient connection limits movement of the door panel out of the predetermined normal path.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34, 38-42 and 45, 46, 48-54 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delgado et al. as applied to claims 31-33, 36, 37 and 44 above, and further in view of Linstadt. Linstadt discloses a door comprising a lower track 8, a door 3, and a panel retention system 12-16, wherein the panel retention system remains in contact with the lower track even if the door panel moves out of a predetermined normal path, the panel retention system comprises a spring 14 and a track follower 13, the spring is in a tube 15, the spring is a tension spring since it would resist tension forces, a pliable elongate coupling member 12.

It would have been obvious to one of ordinary skill in the art to provide Delgado et al. with a retention system, as taught by Linstadt, to enable the door to automatically return to its predetermined normal path.

Response to Arguments

Applicant's arguments filed June 27, 2006 have been fully considered but they are moot in view of the new grounds of rejection.


Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory J. Strimbu
Primary Examiner
Art Unit 3634
August 27, 2007